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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

OCT - 7 1996¹

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Interconnection and Resale) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio Services)

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GTE SERVICE CORPORATION'S REPLY TO OPPOSITIONS

GTE Service Corporation on behalf of its subsidiary telephone and wireless companies ("GTE") hereby submits its reply to oppositions filed in the above-captioned docket. GTE's reply is limited to issues raised by AT&T Corporation ("AT&T") and the Personal Communications Industry Association ("PCIA") in their respective petitions for partial reconsideration¹ and reconsideration and clarification² of the Federal Communications Commission's *First Report and Order* in this proceeding.³ In particular, GTE addresses: (1) PCIA's request to establish a rule that the resale requirement does not require carriers to provide access to proprietary technologies and

¹ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Petition For Partial Reconsideration (filed August 23, 1996 by AT&T Corp.) ("AT&T Petition").

² Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, PCIA Petition for Reconsideration and Clarification of the Personal Communications Industry Association (filed August 23, 1996) ("PCIA Petition").

³ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *First Report and Order*, CC Docket No. 94-54, FCC 96-263 (released July 12, 1996).

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equipment; (2) AT&T and PCIA's request to eliminate the requirement that customer premises equipment ("CPE") bundled with common carrier services be made available for resale; and (3) AT&T's request that the Commission exempt from the resale requirement cellular and personal communications services ("PCS") provider's data services. GTE fully supports these reconsideration requests and responds herein to opponents of these requests.

I. DISCUSSION

A. The Commission Should Allow Carrier's to Protect Proprietary Equipment and Technology

PCIA asks the Commission to reconsider its previous decision and adopt a general rule stating that commercial mobile radio service ("CMRS") providers are not required to provide access to proprietary equipment and technologies as part of the CMRS resale requirement. The proprietary equipment and technologies exception was originally requested by GTE in its reply comments filed in this docket.⁴ GTE argued that the exception was necessary in order to allow competing firms to distinguish themselves in the marketplace with superior technology and innovative products. GTE argued, further, that allowing carriers to control the supply of unique products and services they develop would promote brand name competition. GTE contended that by forcing CMRS providers to make proprietary equipment and technology available to all

⁴ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Reply Comments of GTE Service Corporation, CC Docket No. 94-54 (filed July 14, 1995). This exception was also the subject of a number of *ex parte* presentations made by GTE.

competitors, the Commission would largely eliminate one facet of CMRS competition and remove incentives to invest in developing new technologies.⁵

In the *First Report and Order*, the Commission rejected GTE's request. The Commission stated it was "not persuaded by GTE's argument." It found that the resale requirement does not prevent a carrier from recovering the costs of developing new technology and therefore does not undermine a carrier's incentive to develop innovative products and services.⁶ Although the Commission acknowledged that proprietary information or technology might in some circumstances justify restricting resale, it found that the present record was insufficient to permit formulation of a general rule.⁷

GTE believes that the Commission's arguments miss the point. GTE and PCIA do not argue that requiring CMRS providers to provide proprietary equipment and technology to competitors will prevent such carriers from recouping the cost of developing innovative technology. Nor are they concerned with their ability to protect the proprietary nature of the information or technology through contract language. Rather, the point of the requested rule change/clarification is to allow companies developing innovative products and services to benefit from them in the marketplace. In a competitive marketplace, firms should compete in all facets of the service rendered, including price, quality of service and product differentiation. By imposing a rule that

⁵ *Id.* PCIA's petition largely echoed GTE's arguments. PCIA Petition at 16-18.

⁶ *First Report and Order* at 18, para. 32. The Commission also stated that carriers can protect their proprietary interests by including in sales agreements nondiscriminatory terms to protect those interests.

⁷ *Id.*

requires proprietary equipment and technology to be shared with competitors, the Commission largely eliminates firms' ability to compete in terms of product differentiation and thereby eliminates some of the incentive to develop innovative new products.

Among commenters, only MCI opposes PCIA's request. MCI appears to argue that carriers, by placing the technology for network features and functions in the handset, or by declaring that the exchange of messages between the handset and the network is in a proprietary format, can effectively relegate resellers to purchasers of transmission for resale. MCI is concerned that a proprietary exception will deny resellers the ability to manufacture and operate CPE capable of communicating with the carrier's transmission offering.⁸

MCI's argument is flawed for several reasons. First, GTE and PCIA's proposal is designed to enable product innovators to benefit from proprietary technology residing in CPE.⁹ The proposed rule would not affect a reseller's ability to purchase or develop CPE that will work with CMRS carriers' networks to provide service to the reseller's customers. Second, MCI's argument fails to recognize that the requested rule clarification would benefit resellers and licensees equally. Any carrier would be able to protect proprietary technology or equipment it develops. All carriers, including resellers, should be encouraged to develop new technologies rather than passively benefiting from the innovation of others.

⁸ MCI Comments at 3-4.

⁹ CMRS providers are not required to sell proprietary network equipment to competitors.

B. The Commission Should Not Require Bundled CPE to Be Made Available to Resellers

AT&T and PCIA argue that the Commission should not require CMRS providers to make available to resellers CPE or other non-common carrier components sold in a bundled package with common carrier services. In the *First Report and Order*, the Commission rejected a similar request by AT&T, finding that “excluding from the resale rule all bundled packages that include non-Title II components would potentially offer carriers an easy means to circumvent the rule.”¹⁰ AT&T and PCIA argue that: (1) the Commission seems to mistakenly assume that AT&T is requesting that the Commission exclude the entire bundled package from the resale requirement, rather than just the non-common carrier portions of the package;¹¹ (2) that the Commission lacks authority to require non-common carrier services such as CPE to be provided as part of the resale requirement;¹² (3) that the Commission has failed to explain how excluding CPE (and other non-common carrier services) from the resale requirement will undermine the purposes of the requirement;¹³ and (4) that requiring bundled CPE to be provided to resellers results in facilities-based providers’ subsidizing competitors’ customers equipment costs.¹⁴

¹⁰ *First Report and Order* at 17-18, para. 31. The Commission did allow that some restrictions on resale of a bundled package might be shown to be just and reasonable. *Id.*

¹¹ PCIA Petition at 13.

¹² PCIA Petition at 13-15.

¹³ AT&T Petition at 3-4.

¹⁴ PCIA Petition at 15-16.

MCI, the Telecommunications Resellers Association (“TRA”), and the National Wireless Resellers Association (“NWRA”) oppose the petitioners’ request. MCI argues that absent the bundled equipment rule, facilities-based providers will be able to place network features and functions in CPE and effectively prevent resellers from obtaining those capabilities. MCI also appears concerned that resellers would not be able to purchase CPE capable of operating on or communicating with CMRS providers’ networks.¹⁵ TRA and the NWRA argue that absent the bundled equipment requirement, network services providers will be able to discriminate against resellers. They argue that carriers will be able to reduce equipment prices rather than discounting service charges in order to avoid passing discounted service rates to resellers.¹⁶

GTE fully supports AT&T and PCIA’s request that bundled CPE be excluded from the CMRS resale requirement. GTE agrees that CPE is not a common carrier offering and cannot be included in a resale requirement founded in Title II of the Communications Act. GTE also believes that the resellers concerns are unfounded. First, as noted above, the proposed rule would not affect a reseller’s ability to purchase or develop CPE that will work with CMRS carriers’ networks to provide service to the reseller’s customers. Given that MCI and other wireless resellers have equal access to CPE that operates on CMRS networks, MCI’s opposition can only be seen as an attempt to allow resellers to profit from innovations pioneered by other carriers.

¹⁵ MCI Comments at 3-4

¹⁶ TRA Comments at 10-12, NWRA Opposition at 1-2.

GTE also believes that TRA and NWRA's concerns are misplaced and do not warrant requiring bundled CPE to be provided to resellers. Wireless providers have long discounted CPE in order to generate network usage.¹⁷ As a result of this practice, for the most part, carriers cannot lower any further the prices charged for CPE in bundled packages. Accordingly, carriers do not have the ability to give steeper CPE discounts, as TRA and NWRA suggest, in order to discriminately offer lower prices only to retail customers.

GTE objects to including bundled CPE in the resale requirement because it is fundamentally unfair to require facilities-based providers to subsidize competitors' customers' equipment costs. GTE strongly believes that resellers' unfounded and impractical assertions that carriers might discount equipment in order to keep common carrier service rates artificially high, even if true, does not justify requiring carriers to subsidize resellers' equipment costs. Rather, any alleged discriminatory conduct can be addressed through the complaint process. By using the complaint process, the Commission can prevent discrimination without creating a regulatory windfall for resellers.

C. The Commission Should Apply the Same Resale Requirement to Similar Providers of Wireless Data Services

AT&T asks the Commission to reconsider its decision to exclude from the CMRS resale requirement specialized mobile radio ("SMR") service providers that offer data only services on an interconnected basis and unlicensed data services offerings. AT&T

¹⁷ The fact that carriers have discounted CPE even though they have been required to pass discounted CPE on to resellers proves that carriers' purpose is to spur network usage rather than to create a device for discrimination.

argues that the Commission's ruling places its data services at a competitive disadvantage. AT&T contends that SMR and unlicensed data offerings are viewed as substitutable for and competitive with AT&T's data offerings. It reasons that the Commission's finding that the resale obligation is unduly burdensome for these carriers is likewise applicable to cellular and PCS data offerings.¹⁸

ARDIS Company ("ARDIS"), an SMR data service provider, opposes AT&T's request. While it takes no position on whether AT&T's data service offerings should be included in the resale requirement, it supports the Commission's finding that non-covered SMR data offerings are not positioned to compete effectively with other CMRS providers in the mass market for data services and should not be included in the CMRS resale requirement.¹⁹ MCI, on the other hand, comments that in order to ensure regulatory parity, the Commission should include all wireless data service providers in the resale requirement.²⁰

GTE supports AT&T's reconsideration request. It is imperative in a competitive marketplace that competing services be subject to substantially similar regulations. The Commission should therefore rule that CMRS providers' data service offerings are not subject to the mandatory resale requirement. Given that the wireless data services market is in its infancy, and no carrier can be said to have a competitive advantage

¹⁸ AT&T Petition at 4-5.

¹⁹ ARDIS Opposition at 2-3.

²⁰ MCI Comments at 5.

over another, there is no reason to include data services in the CMRS resale requirement as MCI suggests.

II. CONCLUSION

GTE supports various requests made in AT&T's and PCIA's reconsideration petitions and urges the Commission to reject opposition to those requests. In particular, GTE supports: (1) PCIA's request that the resale requirement should not require carriers to provide access to proprietary technologies and equipment; (2) AT&T and PCIA's request to eliminate the requirement that CPE bundled with common carrier services be made available for resale; and (3) AT&T's request that the Commission exempt from the resale requirement cellular and PCS provider's data services.

Respectfully submitted,

GTE Service Corporation and its telephone
and wireless companies

By Andre J. Lachance

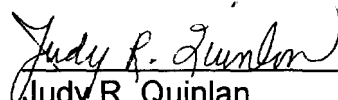
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October 7, 1996

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE Service Corporation's Reply to Oppositions" have been mailed by first class United States mail, postage prepaid, on the 7th day of October, 1996 to all parties of record.



Judy R. Quinlan